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Subject: Microsoft Settlement

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As a long time computer user, I awaited the June 7th, 2000 verdict in the Microsoft antitrust case with great anticipation. When the ruling was released, it seemed to be a much needed reining in of an anticompetitive behemoth that had stifled growth and innovation in the computer software industry for years. How far we have come in the short year and seven months since then.

Despite the later unanimous 7-0 decision in the Court of Appeals upholding the verdict that Microsoft is a monopoly that engaged in anticompetitive practices and thus broke the law, the proposed remedy has shrunk considerably in scope and reach, from the initial drastic solution of splitting the company, to the current consent decree - a mere slap on the wrists. This reversal in the DOJ position and Microsoft's fortunes can hardly be seen as random, apparently riding hard on the coattails of the recently installed Bush administration. Further indication of potential (hidden) political influence in this matter is the recent revelation that Microsoft has included none of the details of its congressional lobbying in information supplied to the court in direct violation of the terms of the Tunney Act(<http://www.washtech.com/news/regulation/14834-1.html>). Note that Microsoft spends more than \$5 million a year lobbying congress.

Regardless of how the current proposed consent decree came to be, I believe that if anything, it is certainly not in the public interest.

Many of the issues that must be addressed under antitrust legislation, such as "redistribution of the ill-gotten gains" do not seem to be mentioned at all in the decree. Further, the decree is ambiguous in many places and generally weak. It seems to in fact condone some of the very behavior that resulted in the current antitrust litigation. I will discuss two of the problems extant in the proposed consent decree that I feel most strongly about.

The court has acknowledged that one of the most significant problems potential competitors to the Microsoft operating system monopoly face is the

"Applications Barrier to Entry." As Microsoft has been so successful in marginalizing non-Microsoft operating systems, there are no _companies_ offering a viable challenger to Microsoft Windows. Thus it is with consternation that I note no clauses catering to the only current reasonable challenger: open source software. I feel that the decree should mandate the release of all Windows Operating System Product APIs, including those related to security, for the purpose of not only building software to operate within a Windows Operating System Product but also for the purpose of developing middleware to allow other operating systems to run Windows software. This would be a clear step toward opening the market to competition.

I also feel strongly about the fact that the Technical Committee mentioned in the consent decree would have little actual enforcement power. This leaves enforcement of the decree up to further litigation. Microsoft has, through its considerable resources, dragged even this trial on for a ridiculously long time. During the period of litigation, Microsoft integrated the Internet Explorer product further into the Windows operating system releasing Windows 98, an act clearly disrespectful to both the plaintiffs and the judicial system. Windows Me, Windows 2000 and Windows XP have also been released and are installed on millions of computers. These are clear indicators that litigation is not fast enough to effectively stem Microsoft bad behavior. This in addition to the fact that Microsoft has enough money to continue litigation almost indefinitely.

I am strongly against the currently proposed consent decree. I am particularly concerned that if this decree were to become binding, it would adversely effect future antitrust litigation against Microsoft.

For more lucid and thorough analysis of the proposed decree, I direct your attention to the comments of Dan Kegel, available at <http://www.kegel.com/remedy/letter.html>. I fully support his comments and analysis.

Thank you for reading my comment. I appreciate your time and attention.

Sincerely,
Jeremy Praissman

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<http://www.hotmail.com>